THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :09.03.2007

WP(C) No.12455/2005

GANGA MALHOTRA ...Petitioner

- versus -

LAND & DEVELOPMENT OFFICER & ORS. ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr M. Dutta
For the Respondent : Mr Gaurav Duggal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

1. The learned counsel appearing for the petitioner submits that the only point involved in this case is whether the respondent No.1 (The Land and Development Officer) can impose a condition of requiring the petitioner to pay 50% unearned increase at the time of giving consent/permission to the transfer of the lease in respect of premises situated in Plot No. 4, Block No. 160, known as 7, Sikandra Road, New Delhi.

2. The letter impugned in this petition has been issued on 11.3.2005 by the respondent No.1. By virtue of the said letter the petitioner has been informed that as per Clause 2 (11) of the Lease Deed, the lessee is required to obtain permission at the time of assignment or transfer of the premises or any part thereof from the Lessor or the Chief Commissioner of Delhi, or such officer or body as the Lessor may authorize on this behalf in writing of the said assignment or transfer. The said Clause is also said to prescribe that, after such permission is given, all such assignees and transferees and the heirs of the lessee shall be bound by all the covenants and conditions therein contained and be answerable in all respects therefor. Citing the above provision of the lease deed the Respondent No.1 has indicated that 50% unearned increase calculated on a pre-determined rate amounting to Rs 10,09,56,339.00 is payable by the petitioner in respect of the transfer of the said property by the petitioner.

3. The petitioner and the other owners namely, respondents Nos. 2 to 16 hold the said property jointly under a perpetual lease dated 16.9.1933 which was made in favour of Mrs Chandrani Bhagyabhari Kaula (Nee Wanchoo) wife of Mr Ganga Ram Kaula. The petitioner and the said respondents are the legal heirs of Mrs Chandrani Bhagyabhari Kaula. The lease, in question, has been placed as Annexure P-1 to the present petition. Clause 2(11) of the Lease Deed which is relevant for the purpose of this case is reproduced hereinbelow:-

> "11. The Lessee shall before every assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lessor or the Chief Commissioner of Delhi, or such officer or body as the Lessor may authorize on this behalf approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefor."

4. The learned counsel for the petitioner, with reference to the above-mentioned Clause, submitted that there is no provision therein for the Respondent No.1, acting on behalf of the lessor, to claim any unearned increase as a condition for permitting transfer of the lease property. He submitted that there is also no other provision or clause in the perpetual lease deed which entitles the respondent No.1 to claim unearned increase. He further submitted that this issue has been decided and is no longer debatable. He referred to the decision in the case of ***Sunil Vasudeva and Others v. Delhi Development Authority***: ***34 (1988) DLT 37*** wherein a learned Single Judge of this Court held that such a lease, being a Government grant, would have to be interpreted according to its own tenor under Section 3 of Government Grants Act, 1895. It was further held, interpreting a similar clause in the perpetual lease involved in the case, that there being no condition for grant of any levy, any fee, cess or payment in the lease itself, the DDA (in that case) was not authorised to make any claim for any such charges. The principle is very clear that unless the perpetual lease itself provides for the charging of unearned increase, the

respondent by itself cannot impose any such condition for transfer. The relevant clause in ***Sunil Vasudeva's*** case *(supra)* read as under:-

> "Without first obtaining such consent not to sub-divide the said land or to part with the possession or transfer or sub-lease a part only of the said land."

Interpreting this clause, the learned Single Judge concluded that the defendant (DDA) had no right to charge the unearned increase under this clause.

5. After having heard the counsel for the parties, I am of the view that this case is entirely covered by the decision in the case of ***Sunil Vasudeva*** *(supra)* and ***Jor Bagh Association (Regd.) & Others v. Union of India & Others***: ***112 (2004) DLT 690***. The ratio of these decisions, which is based on decisions of the Supreme Court, is that unless and until the perpetual lease deed provides for the charging of unearned increase, the respondent by itself cannot impose any such condition for transfer. The reason being that the lease in question is a government grant under the Government Grants Act, 1895 and in terms of Section 3 thereof, the same has to be considered and interpreted according to its own tenor, notwithstanding any statutory provisions. That being the case, this petition is liable to succeed. The impugned order/ notice dated 11.03.2005 is set aside to the extent of the demand for unearned increase. As regards the other charges, mentioned therein, there is no challenge by the petitioner and the same shall be paid, if not already paid.

This writ petition is allowed to this extent. No costs.

BADAR DURREZ AHMED
(JUDGE)

March 09, 2007
J/SR